

DEPARTMENT OF THE TREASURY

Cary Kennedy
State Treasurer



Eric Rothaus
Deputy Treasurer

REQUEST FOR QUALIFICATIONS FOR FINANCIAL ADVISOR COLORADO STATE TREASURER FISCAL YEAR 2008-09 AND 2009-10 BUILDING EXCELLENT SCHOOLS TODAY LEASE PURCHASE AGREEMENTS

I. INTRODUCTION

- A. The State Treasurer seeks a financial advisor to assist in the execution of lease purchase agreements. The Treasurer will use the proceeds obtained in the transaction(s) to fund capital projects for public kindergarten through twelfth grade school districts in the state of Colorado.
- B. The Legislature recently enacted and the Governor has signed into law House Bill 08-1335 ([HB08-1335](#)), the Building Excellent Schools Today (BEST) Act. This legislation authorizes the Treasurer to execute lease purchase agreements on behalf of the state for certain capital projects at public kindergarten through twelfth grade school districts as specified in HB08-1335. The legislation sets the maximum annual lease payment amount. The repayment source for these transactions is the public school capital construction assistance fund which was created in HB08-1335. The law also allows the State Treasurer to enter into lease purchase agreements on behalf of school districts so that local school districts may make annual sub-lease payments as a local matching contribution. The legislation provides for ongoing lease purchase agreements in future years, up to a total annual aggregate BEST lease payment cap.
- C. The Treasurer seeks proposals from firms to serve as a financial advisor for the implementation of the lease purchase program set out in HB08-1335 for fiscal years 2008-2009 and 2009-2010.

**All proposals must be received at the State Treasurer's office by:
JANUARY 9, 2009 at 3:00 p.m. MST**

II. MINIMUM REQUIREMENTS

- A. Proposing firms shall address the following requirements in their proposal.
 - 1. The firm must state its compliance with MSRB Rule G-37 and disclose any regulatory inquiry relating to the firm's compliance with G-37.
 - 2. The firm must disclose any pending or completed investigation initiated by any governmental or regulatory body including the Securities and Exchange Commission (SEC), the National Association of Security Dealers (NASD), the Colorado Securities Commission, the status of any such investigation, and fines/regulatory actions which occurred after completed investigations.

- B. The firm must have had substantial experience in serving as financial advisor for lease purchase agreements and tax exempt financing.
- C. The firm must successfully demonstrate that it is able to begin work on the project upon selection and is able to devote the specific personnel indicated to work on the project as their top priority.

III. SCOPE OF SERVICES

- A. The Treasurer expects the selected firm to perform a large number and variety of tasks. These tasks are divided into three categories.
- B. **MACRO MANAGEMENT TASKS** – these tasks include but are not limited to those associated with the overall management of the Treasurer’s duties prescribed by HB08-1335. Examples include:
 - 1. Develop a strategy and schedule for ensuring the proceeds from the lease purchase agreements are deposited with the lessor at a time most advantageous to the school districts and the State. This could include pooling all projects for one lease purchase agreement or executing two or more lease purchase agreements.
 - 2. Develop a financing plan that maximizes the proceeds and minimizes the costs. This plan should include identifying the corporation, non-profit, or trust to serve as lessor for the issuance of the related certificates of participation as well as recommending the sale of related COPs through a negotiated or competitive sale processes.
 - 3. Identify criteria and minimum qualifications for underwriters, attorneys, trustee/paying agent, and other professionals to be members of a successful finance team.
 - 4. Ensure effective communications within the finance team, between the team and the Treasury, and between the Treasury and external parties such as the Public School Capital Construction Assistance Division at the Colorado Department of Education (CDE) the Public School Capital Construction Assistance Board, and local school boards.
 - 5. Develop a project plan and timeline.
 - 6. Evaluate the use of bond insurance for new construction in light of the crisis in the municipal bond insurance market and propose alternatives, such as collateral swaps and naked offerings.
 - 7. Other tasks related to the HB08-1335 lease purchase agreements.
- C. **MICRO MANAGEMENT TASKS** – these tasks include those required for the day-to-day implementation of the macro-management tasks. Examples include:
 - 1. Develop request-for-qualifications for underwriters, attorneys, etc. and assist the Treasurer and her designees with the review, evaluation, and selection process. The financial advisor will not be an evaluator; however, the advisor must maintain the confidentiality of all discussions and information surrounding the evaluation and selection process. (see D.2. below).
 - 2. Collect and prepare information and data needed for meetings, documents, etc.
 - 3. Coordinate the scheduling and preparation of meetings among team members and involved State and local school district members.
 - 4. Coordinate the lease payment delivery and settlement.
 - 5. Coordinate the development of sub-lease agreements between the State and local school districts, which would include the establishment of an annual sub-lease payment amount and schedule.

6. Coordinate real estate due diligence work by schools and vendors to ensure all items are completed for closing.
 7. Assist in preparation of a presentation package to be submitted to selected rating agencies.
 8. Assist counsel in preparing the text of an official statement issued in connection with lease purchase agreements.
 9. Manage the competitive or negotiated sale process.
 10. Other tasks related to the HB08-1335 lease purchase agreements.
- D. FINANCIAL ADVISORY TASKS – in addition to the tasks presented above, as necessary the financial advisor will also be responsible for providing financial advice to the Treasurer related to the lease purchase agreement(s) and related certificates of participation. Examples include:
1. Provide independent financial advice to the Treasurer throughout the lease purchase process, including an evaluation of any credit enhancement mechanisms and exposures.
 2. Advise the Treasurer as to the terms and fees presented by firms proposing to be part of the finance and legal team.
 3. Review proposed structures and marketing plans prepared by the assembled finance team.
 4. Review all legal documents produced as part of the lease purchase process.
 5. Participate in the rating process as requested.
 6. Provide advice on the investment of proceeds that meet applicable federal tax laws and regulations.
 7. Other tasks related to the HB08-1335 lease purchase agreements.

IV. FORMAT FOR PROPOSALS - Firms that respond to this RFQ shall utilize the following format for their proposal.

- A. Overview: The proposal should demonstrate your ability to provide the services requested with expertise and in a timely manner.
- B. Characteristics of the Firm
 - 1. Describe the firm and the firm's location, noting the location of the personnel providing the service if different from the location of the firm's principal office.
 - 2. Describe briefly the firm's experience in providing tax exempt lease purchase financing advice to public entities.
 - 3. Provide a list of at least three public client references that are willing to discuss their experiences with the firm. Colorado clients with unique issues or clients that have completed pooled lease purchase agreements are preferred.
 - 4. Describe any business affiliations, including subsidiaries, joint ventures, or "soft-dollar" arrangements with any organization, that in any way could affect, or be perceived to affect, the advice or services provided to the Treasurer. State the firm's policy for providing any compensation to any other organization or business related to the advice or services provided to the Treasurer.
 - 5. Describe any Securities and Exchange Commission (SEC) or State regulatory censure or litigation within the past three years related to the services being requested. Describe any past regulatory censure or litigation involving any individuals added to the firm in the past three years.
 - 6. Include as an appendix the firm's Form ADV, Parts I and II, which were most recently filed with the SEC, if applicable.
 - 7. Include as an appendix the firm's errors and omissions insurance policy and financial advisor professional liability coverage.
- C. Subcontractors
 - 1. Proposing firms may include in their proposal any sub-contractors that will assist the firm in accomplishing the tasks listed under the Scope-of-Work. Note that the financial advisor must be a firm that meets the minimum requirements presented in II.B above.
 - 2. A sub-contractor(s) with a major role in providing the services shall provide answers to the questions above, describe key personnel, and provide an abridged description of its skills and experience in an appendix to the proposal.
 - 3. If a principal firm considers it advantageous to serve as a co-FA with another principal firm, the two firms may either submit separate proposals that individually indicate their desire to work together, or submit a joint proposal. They shall describe any past joint experience; describe their proposed working relationship for this engagement; and identify the firm that will have the primary responsibility for providing the requested services.
- D. Personnel
 - 1. Provide biographical information on the professionals that will be directly involved in providing advice to the Treasurer and the amount of time (in percent) that they would commit to the engagement. The professionals designated to work on the project shall be expected to make the project a priority over other projects.

2. Clearly identify on the first page of the proposal the name, address, phone and fax numbers, and the email address of the person who will be the direct contact for the proposal and the evaluation process.
- E. Experience: Describe the firm's experience in providing financial advice on pooled lease purchase agreements for states or other public entities. Particular experience in the area of tax exempt financing for K-12 education or Colorado issues will be considered, so the proposal should include specific information on such experience. Include enough information so that an evaluator can clearly understand the firm's role and responsibilities.
- F. Accomplishments: From the experience presented above, select and describe in detail a few selected significant accomplishments by the firm as financial advisor. Include solutions to major obstacles that were encountered and any lessons learned from the issuance process. Especially describe accomplishments involving similar programs to BEST or success overcoming hurdles similar to those likely to be encountered by BEST. Also list accomplishments involving recent issues (since mid-Sept. 2008), the challenges they presented and the ways they were addressed.
- G. State Financing
 1. Offer your perspective of the key issues and obstacles that may affect the State's execution of lease purchase agreements and alternative approaches. Include a discussion of the constitutional, statutory and revenue issues that could affect the lease purchase agreements.
 2. Discuss the relative merits of offering COPs through competitive or negotiated sale processes.
 3. Describe particular considerations that will likely be central to the current market situation.
 4. Describe your capacity to meet the scope-of-work on a schedule required by the financing.
 5. Discuss your firm's expertise in all three of the work categories set out above and its work plan to cover the entire array of tasks.

V. FEES AND EXPENSES

- A. Present the fees that would be charged for this engagement.
 1. Paid out of COP proceeds: Unless the Treasurer exercises her option in 2) below, the financial advisor will be paid from the proceeds of the related COPs. Present the fees that would be charged under that scenario. If the fee proposal is other than a flat fee, provide an estimate of the fees to be charged as well as a maximum. Present fees for a single issue, and for each subsequent issue. Acknowledge in the proposal the fact that fees are payable solely from the proceeds of the financing.
 2. Paid from the Public School Capital Construction Fund: Notwithstanding the above, the Treasurer in conjunction with the Public School Capital Construction Assistance Board can, at their sole discretion, choose to pay the financial advisor from the Public School Capital Construction Assistance fund, outside of a COP issue. Please present the fees that would be charged under this scenario, at an hourly rate, and maximum.
 3. The Treasurer shall indicate, at the commencement of the engagement, whether the financial advisor will be paid from proceeds or from the Public Capital Construction Assistance Fund.

- B. Include an estimate of expenses to be paid that would be incurred.

VI. ENGAGEMENT

- A. The engagement will be from the time of award through the end of fiscal year 2009-2010 (i.e. June 30, 2010), with three annual options to extend an additional year fiscal year. The engagement may be canceled by either party for any reason upon thirty calendar days written notice.
- B. The advisor will not accept any fees from any sources other than the State for the advice and services provided to the Treasurer during the engagement period.
- C. The firm selected to serve as financial advisor will not be considered to serve as underwriter for the notes.
- D. If there is a material change to the scope of work, additional fees or re-directed payments will be re-negotiated between the State and advisor.
- E. The selected firm must agree to the State's standard contract administrative provisions included with the RFQ.

VII. EVALUATION PROCESS

- A. An evaluation committee appointed by the Treasurer will review the proposals. Committee membership will include persons from within and outside the Treasury Department. The committee will evaluate the proposals according to merit and may choose to select firm(s) to be interviewed. Upon review of the committee's recommendation, the Treasurer will select the financial advisor.
- B. The Treasurer shall have to right to select more than one firm if she deems it to be in the best interest of the State.
- C. The committee will evaluate the proposals using the criteria listed below in order of importance.
 - 1. The experience and qualifications of the individuals assigned to the engagement.
 - 2. The firm's understanding of the State's requirements and advisory services as presented in the firm's proposal, including the firm's understanding of both the TABOR issues in the State constitution and issues unique to the execution of lease purchase agreements.
 - 3. The fees proposed for the services requested. Although the cost of the requested services is an important criterion for selection, the Treasurer may select a firm whose proposed fees are greater than the fees proposed by another firm(s) if she determines that additional considerations justify the expense.

VIII. OTHER ADMINISTRATIVE ITEMS

- A. The response to this RFQ should not exceed 15 pages excluding appendices, with every page numbered except for the cover and partition pages. Margins of one inch, and font no smaller than 12 point. Double columns of text on a single page are discouraged.
- B. The Treasurer shall have the right to cancel this RFQ at any time and reject any or all proposals. The State assumes no liability for expenses incurred by firms responding to RFQ. Materials submitted in the proposal become property of the State. Firms should identify any information that should be considered proprietary and confidential.

- C. By submitting a proposal, a firm certifies that it has fully read and understands the RFQ and has full knowledge of the scope of services to be provided, and the terms and conditions under which the services are to be performed.
- D. Interested firms should submit **7 COPIES** of their proposal to: Cary Kennedy, Colorado State Treasurer, 140 State Capitol, Denver, Colorado, 80203. One additional copy should be sent by email to *mary.wickersham@state.co.us*. Fax copies will not be accepted.
- E. Additional questions may be directed to Mary Wickersham only by email. Answers will be distributed to all firms that received this RFQ except firms that have notified the Treasury that they do not wish to participate.
- F. There is no penalty whatsoever on a firm that chooses not to submit a proposal.
- G. Final selection is planned for January 19, 2008.
- H. The deadline for submitting proposals is Friday 3:00 p.m. January 9, 2009.**

SPECIAL PROVISIONS

The Special Provisions apply to all contracts except where noted in *italics*.

- 1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).** This contract shall not be deemed valid until it has been approved by the Colorado State Controller or designee.
- 2. FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
- 3. INDEMNIFICATION.** Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.
[Applicable Only to Intergovernmental Contracts] No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.
- 4. INDEPENDENT CONTRACTOR. 4 CCR 801-2.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither contractor nor any agent or employee of contractor shall be or shall be deemed to be an agent or employee of the state. Contractor shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by the state pursuant to this contract. Contractor acknowledges that contractor and its employees are not entitled to unemployment insurance benefits unless contractor or a third party provides such coverage and that the state does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the state to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the state) and unemployment compensation insurance in the amounts required by law and shall be solely responsible for its acts and those of its employees and agents.
- 5. NON-DISCRIMINATION.** Contractor agrees to comply with the letter and the spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.
- 6. CHOICE OF LAW.** The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract, to the extent that this contract is capable of execution. At all times during the performance of this contract, Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.
- 7. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to Intergovernmental Agreements]** The State Controller may withhold payment of certain debts owed to State agencies under the State's vendor offset intercept system for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et. seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts certified by the State Controller as owing to the State as a result of final agency determination or judicial action.
- 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** No State or other public funds payable under this contract shall be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies that, for the term of this contract and any extensions, Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
- 9. EMPLOYEE FINANCIAL INTEREST. CRS §24-18-201 and §24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract.
- 10. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c). Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, institution of higher education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.
- 11. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

